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**SECURITIES AND EXCHANGE COMMISSION**

**[Release No. 34-96198; File No. SR-MIAX-2022-38]**

**Self-Regulatory Organizations: Notice of Filing and Immediate Effectiveness of a  
Proposed Rule Change by Miami International Securities Exchange LLC to Amend  
Its Fee Schedule**

November 1, 2022

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on October 12, 2022, Miami International Securities Exchange LLC (“MIAX” or “Exchange”) filed with the Securities and Exchange Commission (“Commission”) a proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

**I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change**

The Exchange is filing a proposal to amend the MIAX Options Fee Schedule (the “Fee Schedule”).

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<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

The text of the proposed rule change is available on the Exchange's website at <http://www.miaxoptions.com/rule-filings>, at MIAX's principal office, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend the Fee Schedule to amend footnote “\*” of the MIAX Price Improvement Mechanism (“PRIME”) Fees table<sup>3</sup> to increase the enhanced PRIME Break-up credit of \$0.69 to \$0.73 for EEMs that submit a Priority Customer PRIME Order in Non-Penny Classes that is submitted to the PRIME Auction that trades with PRIME AOC Responses and/or PRIME Participating Quotes or Orders, if the PRIME Order experiences a break-up of greater than forty percent (40%). The Exchange initially filed this proposal on September 30, 2022 (SR-MIAX-2022-34). On October 12, 2022, the Exchange withdrew SR-MIAX-2022-34 and resubmitted the proposal (SR-

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<sup>3</sup> See Section 1)a)v) of the Exchange's Fee Schedule on its public website (available at [www.miaxoptions.com/fees](http://www.miaxoptions.com/fees) ).

MIAX-2022-36). On October 19, 2022, the Exchange withdrew SR-MIAX-2022-36 and resubmitted this proposal (SR-MIAX-2022-38).

The proposed changes are immediately effective.

#### Background

The MIAX Price Improvement Mechanism (“PRIME”) is a process by which a Member<sup>4</sup> may electronically submit for execution an order it represents as agent (an “Agency Order”) against principal interest and/or solicited interest. The Member that submits the Agency Order (“Initiating Member”) agrees to guarantee the execution of the Agency Order by submitting a contra-side order representing principal interest or solicited interest (“Contra-Side Order”).<sup>5</sup> When the Exchange receives a properly designated Agency Order for Auction processing, a request for response (“RFR”) detailing the option, side, size and initiating price is broadcasted to MIAX participants up to an optional designated limit price.<sup>6</sup> Members may submit responses to the RFR, which

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<sup>4</sup> The term “Member” means an individual or organization approved to exercise the trading rights associated with a Trading Permit. Members are deemed “members” under the Exchange Act. See Exchange Rule 100.

<sup>5</sup> See Exchange Rule 515A(a).

<sup>6</sup> See Exchange Rule 515A(a)(2)(B).

can be either an Auction or Cancel (“AOC”) order<sup>7</sup> or an AOC eQuote.<sup>8</sup> The PRIME mechanism is used for orders on the Exchange’s Simple Order Book.<sup>9</sup>

The Exchange provides a PRIME Break-up credit of \$0.60 per contract for Non-Penny Classes in a PRIME Auction.<sup>10</sup> The Exchange subsequently adopted an enhanced PRIME Break-up credit of \$0.69 per contract for Priority Customer PRIME Orders in Non-Penny Classes when the order break-up percentage was greater than 40%.<sup>11</sup> The enhanced PRIME Break-up credit of \$0.69 per contract is applied to the EEM that submitted a PRIME Order in Non-Penny classes that is submitted to a PRIME Auction that trades with PRIME AOC Responses and/or PRIME Participating Quotes or Orders, if the PRIME Order experiences a break-up of greater than forty percent (40%). The Exchange now proposes to increase the per contract credit from \$0.69 to \$0.73. The

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<sup>7</sup> An Auction-or-Cancel or “AOC” order is a limit order used to provide liquidity during a specific Exchange process (such as the Opening Imbalance process described in Rule 503) with a time in force that corresponds with that event. AOC orders are not displayed to any market participant, are not included in the MBBO and therefore are not eligible for trading outside of the event, may not be routed, and may not trade at a price inferior to the away markets. See Exchange Rule 516(b)(4).

<sup>8</sup> AOC eQuote An Auction or Cancel or “AOC” eQuote is a quote submitted by a Market Maker to provide liquidity in a specific Exchange process (such as the Opening Imbalance Process described in Rule 503) with a time in force that corresponds with the duration of that event and will automatically expire at the end of that event. AOC eQuotes are not displayed to any market participant, are not included in the MBBO and therefore are not eligible for trading outside of the event. An AOC eQuote does not automatically cancel or replace the Market Maker’s previous Standard quote or eQuote. See Exchange Rule 517(a)(2)(ii).

<sup>9</sup> The “Simple Order Book” is the Exchange’s regular electronic book of orders and quotes. See Exchange Rule 518(a)(15).

<sup>10</sup> See Section 1)a)v) of the Exchange’s Fee Schedule on its public website (available at [www.miaxoptions.com/fees](http://www.miaxoptions.com/fees) ).

<sup>11</sup> See Securities Exchange Act Release No. 93306 (October 13, 2021), 86 FR 57869 (October 19, 2021) (SR-MIAX-2021-42).

decision to increase the enhanced Priority Customer Break-up credit is based on an analysis of current revenue and volume levels and is designed to continue to encourage Priority Customer order flow to PRIME Auctions.

## 2. Statutory Basis

The Exchange believes that its proposal to amend its Fee Schedule is consistent with Section 6(b) of the Act<sup>12</sup> in general, and furthers the objectives of Section 6(b)(4) of the Act<sup>13</sup> in particular, in that it is an equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other persons using its facilities. The Exchange also believes the proposal furthers the objectives of Section 6(b)(5) of the Act<sup>14</sup> in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest and is not designed to permit unfair discrimination between customers, issuers, brokers and dealers.

The Exchange believes its proposal provides for the equitable allocation of reasonable dues and fees and is not unfairly discriminatory for the following reasons. The decision to increase the enhanced Priority Customer Break-up credit is based on an analysis of current revenue and volume levels and is designed to continue to encourage Priority Customer order flow to PRIME Auctions. The Exchange operates in a highly competitive market in which market participants can readily direct order flow to competing venues if they deem fee levels at a particular venue to be excessive or

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<sup>12</sup> 15 U.S.C. 78f(b).

<sup>13</sup> 15 U.S.C. 78f(b)(4).

<sup>14</sup> 15 U.S.C. 78f(b)(5).

incentives to be insufficient. More specifically, the Exchange is one of 16 registered options exchanges competing for order flow. Based on publicly-available information, and excluding index-based options, no single exchange has more than approximately 11% of the market share of executed volume of multiply-listed equity and exchange-traded fund (“ETF”) options trades as of September 26, 2022, for the month of September 2022.<sup>15</sup> Therefore, no exchange possesses significant pricing power in the execution of multiply-listed equity and ETF options order flow. More specifically, as of September 26, 2022, the Exchange has a total market share of 5.23% of all equity options volume, for the month of September 2022.<sup>16</sup>

The Exchange believes that the ever-shifting market share among the exchanges from month to month demonstrates that market participants can shift order flow, or discontinue use of certain categories of products, in response to fee changes. For example, on March 1, 2019, the Exchange filed with the Commission an immediately effective filing to decrease certain credits assessable to Members pursuant to the PCRP.<sup>17</sup> The Exchange experienced a decrease in total market share between the months of February and March of 2019. Accordingly, the Exchange believes that the March 1, 2019, fee change may have contributed to the decrease in the Exchange’s market share and, as such, the Exchange believes competitive forces constrain options exchange transaction and non-transaction fees.

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<sup>15</sup> See MIAX’s “The market at a glance/MTD AVERAGE”, available at <https://www.miaxoptions.com/> (Data as of 9/1/2022 – 9/26/2022).

<sup>16</sup> See *id.*

<sup>17</sup> See Securities Exchange Act Release No. 85301 (March 13, 2019), 84 FR 10166 (March 19, 2019) (SR-MIAX-2019-09).

Accordingly, competitive forces constrain the Exchange's transaction fees, and market participants can readily trade on competing venues if they deem pricing levels at those other venues to be more favorable. In response to the competitive environment, the Exchange offers specific rates and credits in its Fee Schedule, like those of other options exchanges' fees schedules, which the Exchange believes provides incentives to Members to increase order flow of certain qualifying orders.

The Exchange believes its proposal to increase the enhanced PRIME Break-up Credit for Non-Penny Classes for Priority Customers is reasonable, equitably allocated and not unfairly discriminatory because this change is for business and competitive reasons. In order to attract order flow the Exchange initially set its rebates and fees for its PRIME Auctions so that they were meaningfully higher/lower than other options exchanges that provide comparable price improvement mechanisms.<sup>18</sup> The Exchange now believes that it is appropriate to further adjust these fees so that they are competitive with other Exchanges that offer similar price improvement functionality and maintain a similar credit methodology. Specifically, the Cboe Exchange provides a Break-up Credit of \$0.60 in Non-Penny Classes<sup>19</sup> and the BOX Exchange provides a Break-up Credit of \$0.81 in Non-Penny Classes,<sup>20</sup> therefore the Exchange's proposed enhanced Break-up credit of \$0.73 in Non-Penny Classes is in line with Break-up credits in Non-Penny

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<sup>18</sup> See Cboe Exchange Rule 5.73 and 5.74; See also BOX Exchange Rule 7150 and 7245.

<sup>19</sup> See Cboe Exchange Fee Schedule, "Break-Up Credits," on its public website (available at [https://cdn.cboe.com/resources/membership/Cboe\\_FeeSchedule.pdf](https://cdn.cboe.com/resources/membership/Cboe_FeeSchedule.pdf) ).

<sup>20</sup> See Section IV. Electronic Transaction Fees, B. PIP and COPIP Transactions, of the BOX Options Exchange Fee Schedule on its public website (available at <https://boxoptions.com/fee-schedule/> ).

Classes currently available on other exchanges. The Exchange believes its proposed enhanced Break-up credit in Non-Penny Classes will allow the Exchange to remain competitive and should enable the Exchange to continue to attract order flow to PRIME Auctions and to also maintain market share.

The Exchange believes that its proposal will continue to encourage Priority Customer order flow to PRIME Auctions. Increased Priority Customer order flow benefits all market participants because it continues to attract liquidity to the Exchange by providing more trading opportunities. This attracts Market Makers and other liquidity providers, thus, facilitating price improvement in the auction process, signaling additional corresponding increase in order flow from other market participants, and, as a result, increasing liquidity on the Exchange.

As noted above, the Exchange operates in a highly competitive market. The Exchange is only one of several options venues to which market participants may direct their order flow, and it represents a small percentage of the overall market. The Exchange believes that the proposed fees are reasonable, equitable, and not unfairly discriminatory in that at least one competing options exchange offers similar fees and credits in connection with similar price improvement auctions.<sup>21</sup>

The Exchange also believes that this proposal is consistent with Section 6(b)(5) of the Act<sup>22</sup> because it perfects the mechanisms of a free and open market and a national market system and protects investors and the public interest because it provides an additional incentive for Members to increase Priority Customer order flow to the

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<sup>21</sup> See supra note 20.

<sup>22</sup> 15 U.S.C. 78f(b)(1) and (b)(5).



Exchange in order to obtain the highest volume threshold, which benefits all market participants by providing more trading opportunities and tighter spreads.

In addition, The Exchange believes that its proposal is consistent with Section 6(b)(5) of the Act<sup>23</sup> because it perfects the mechanisms of a free and open market and a national market system and protects investors and the public interest because Priority Customer order flow will bring greater volume and liquidity to the Exchange, which benefits all market participants by providing more trading opportunities and tighter spreads. To the extent Priority Customer order flow is increased by this proposal, market participants will increasingly compete for the opportunity to trade on the Exchange including sending more orders and provided narrower and larger-sized quotations in the effort to trade with such Priority Customer order flow.

The Commission has repeatedly expressed its preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. In Regulation NMS, the Commission highlighted the importance of market forces in determining prices and self-regulatory organization (“SRO”) revenues and, also, recognized that current regulation of the market system “has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.”<sup>24</sup>

The Exchange believes that the ever-shifting market shares among the exchanges from month to month demonstrates that market participants can shift order flow or discontinue or reduce use of certain categories of products, in response to transaction and

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<sup>23</sup> 15 U.S.C. 78f(b)(4).

<sup>24</sup> See Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496 (June 29, 2005).

non-transaction fee changes. Accordingly, competitive forces constrain the Exchange's transaction fees and rebates, and market participants can readily trade on competing venues if they deem pricing levels at those other venues to be more favorable. The Exchange believes the proposal reflects a reasonable and competitive pricing structure which will continue to incentivize market participants to direct liquidity adding orders to the Exchange, which the Exchange believes would enhance liquidity and market quality on the exchange to the benefit of all Members.

For the reasons discussed above, the Exchange submits that the proposal satisfies the requirements of Sections 6(b)(4) and 6(b)(5) of the Act<sup>25</sup> in that it provides for the equitable allocation of reasonable dues, fees and other charges among its Members and other persons using its facilities and is not designed to unfairly discriminate between customers, issuers, brokers, or dealers.

B. Self-Regulatory Organization's Statement on Burden on Competition

In accordance with Section 6(b)(8) of the Act,<sup>26</sup> the Exchange does not believe that the proposed rule change will impose any burden on intra-market or intra-market competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange believes its proposal to increase its enhanced PRIME Break-up Credit for Non-Penny Classes for Priority Customers is reasonable, equitably allocated and not unfairly discriminatory as the credit will be applied equally to all Members eligible to receive the credit. The Exchange believes that its proposal will continue to encourage Priority Customer order flow to PRIME Auctions. Increased Priority Customer order

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<sup>25</sup> 15 U.S.C. 78f(b)(4) and (5).

<sup>26</sup> 15 U.S.C. 78f(b)(8).

flow benefits all market participants because it continues to attract liquidity to the Exchange by providing more trading opportunities and tighter spreads.

The Exchange does not believe that its proposal will impose any burden on inter-market competition that is not necessary or appropriate in furtherance of the purposes of the Act because, as noted above, at least one other competing options exchange currently has similar rebates in place in connection with similar price improvement auctions.<sup>27</sup> Additionally, the Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues if they deem fee levels at a particular venue to be excessive or incentives to be insufficient. In such an environment, the Exchange must continually adjust its fees and incentives to remain competitive with other exchanges and to attract order flow to the Exchange. The Exchange is one of 16 options exchanges competing for order flow. Based on publicly available information, and excluding index-based options, no single options exchange has more than approximately 11% of the market share of executed multiply-listed equity and ETF options as of September 26, 2022, for the month of September 2022.<sup>28</sup> Market participants can readily choose to send their orders to other exchanges if they deem fee levels or incentives at those other venues to be more favorable. In such an environment, the Exchange must continually adjust its fees and incentives to remain competitive with other exchanges and to attract order flow. The Exchange believes that the proposed rule change reflects this competitive environment.

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<sup>27</sup> See supra note 20.

<sup>28</sup> See supra note 15.

Moreover, the Commission has repeatedly expressed its preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. Specifically, in Regulation NMS, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system “has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.”<sup>29</sup> The fact that this market is competitive has also long been recognized by the courts. In *NetCoalition v. Securities and Exchange Commission*, the D.C. Circuit stated as follows: “[n]o one disputes that competition for order flow is ‘fierce.’ . . . As the SEC explained, ‘[i]n the U.S. national market system, buyers and sellers of securities, and the broker-dealers that act as their order-routing agents, have a wide range of choices of where to route orders for execution’; [and] ‘no exchange can afford to take its market share percentages for granted’ because ‘no exchange possesses a monopoly, regulatory or otherwise, in the execution of order flow from broker dealers’ . . .”<sup>30</sup> Accordingly, the Exchange does not believe its proposed fee change imposes any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization’s Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

Written comments were neither solicited nor received.

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<sup>29</sup> See Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 47396, 37499 (June 29, 2005).

<sup>30</sup> *NetCoalition v SEC*, 615 F.3d 525, 539 (D.C. Cir 2010) (quoting Securities Exchange Act Release No. 59039 (December 2, 2008), 73 FR 74770, 74782-83 (December 9, 2008) (SR-NYSEArca-2006-21)).

### III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act,<sup>31</sup> and Rule 19b-4(f)(2)<sup>32</sup> thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

### IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

#### Electronic comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-MIAX-2022-38 on the subject line.

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<sup>31</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

<sup>32</sup> 17 CFR 24.19b-4(f)(2).

Paper comments:

- Send paper comments in triplicate to Secretary, Securities and Exchange

Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-MIAX-2022-38. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street, NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-MIAX-2022-38, and should be submitted on or before **[INSERT DATE 21 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>33</sup>

**J. Matthew DeLesDernier,**

*Deputy Secretary.*

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<sup>33</sup> 17 CFR 200.30-3(a)(12).